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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision: 22.12.2006.

Central Bank of India

...Petitioner

vs

Presiding Officer, Industrial Tribunal, New Delhi and another.

... Respondents.

CORAM: Hon'ble Ms. Justice Kiran Anand Lall.

Present:- Mr.H.S. Sawhney, Senior Advocate with
Ms.Vanita Sapra, Advocate for the petitioner.
Mr.R.K. Malik,Advocate for respondent No.2.

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Kiran Anand Lall,J.

The petitioner bank has filed this Civil Writ Petition challenging the award dated 15.5.1997 (Annexure P1) vide which the Industrial Tribunal ordered reinstatement of the workman -respondent No.2 (Head Cashier) in service with full back wages with interest @12 % per annum, after converting the punishment of dismissal from service, into stoppage of one increment without cumulative effect.

Briefly, the facts of the case are that respondent No.2 was posted as a Head Cashier in the petitioner bank, in its Branch at Ambala Cantt. He obtained leave to avail the Leave Fare Concession from 16.4.1979 to 30.4.1979 and took an advance of Rs.600/-. He availed his leave but did not perform any journey. Again on 19.7.1980, he applied for leave from 18.8.1980 to 1.9.1980 in order to avail Leave Fare Concession and took an advance of Rs.2000/- for the purpose. This time, too, he availed leave but did not perform any journey. As he did not submit the requisite bills to the Bank, to substantiate the utilization of the Leave Fare

Concession, memos dated 22.6.1979 and 27.9.1980 were issued to him by the Manager of the Bank for doing the needful viz. for submitting requisite bills in respect of the journeys which were to be performed by him with the money taken as advance. Explanation submitted by him thereto was that he could not perform journey on either of the two occasions, due to illness. The total amount of Rs.2600/- taken as Leave Fare Concession advance, was, therefore, later, recovered from him, along with interest at the commercial rate i.e. @ 18% per annum (re: Para 10 of the impugned order).

The disciplinary authority also conducted a domestic enquiry against respondent No.2 (workman) into the charges of mis-appropriation of Leave Fare Concession Advance, held him guilty vide report Ex.W/1, and proposed the punishment of stoppage of one increment, for a period of six months, under para 19.8 (c) of the Bipartite Settlement. The quantum of punishment was, however, subsequently increased by the disciplinary authority at the instance of higher authority, vide Ex.W-2 dated 28.7.1982, and the penalty of dismissal from service was proposed under clause 19.6 (a) of the Bipartite Settlement. Ultimately, the disciplinary authority awarded the punishment of dismissal from service to him vide order dated 13.10.1982.

Admittedly, the enhancement in punishment was done by the disciplinary authority, at the instance of higher authority. Reference in this connection may be made to the contents of para 13 of the impugned award, which reads as under:-

> "In his deposition, MW/1, who was both the Disciplinary Authority as well as Enquiry Officer, has deposed that Exhibit W/1 bears his signatures. When MW/1, was confronted with the question by

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> this court to offer explanation about two different findings proposing two different punishments for the same charge, he disclosed that the punishment under the second set of findings (Exhibit W/2) was proposed which was harsher than the earlier one, (Exhibit W/1), at the instance of the higher authority."

The Tribunal set aside the enhanced punishment of dismissal from service, and held that stoppage of one increment without cumulative effect was sufficient.

After hearing both sides, I find that the impugned award does not suffer from any infirmity. The Tribunal had rightly set aside the order of dismissal, as it was not passed, in accordance with the relevant rules. The procedure with regard to imposition of punishment on the Award Staff, while taking disciplinary action against them, is provided under clause 8 of the Bipartite Settlement. The relevant sub-clauses of this clause are 8.7, 8.8 and 8.9, which are reproduced as under:-

> "8.7 While imposing the punishment, the Disciplinary Authority will take into consideration extenuating and aggravating factors relating only to the work situation of the employee. Other extraneous factors relating to the personal life/family circumstances of the employee should not act as a mitigating factor in the mind of the Disciplinary Authority while imposing punishment. The Disciplinary Authority shall also keep in mind the overall policy of the Bank communicated to him from time to time in this regard. He must also ensure that the punishment in each case is capable of implementation.

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> 8.8. Having decided on the punishment the Disciplinary Authority should issue a show cause memo (Draft'F') to the employee giving in brief his findings and as to why the punishment proposed should not be imposed say within a period of 15 days. A date for personal hearing may also be given. If the employee avails of the opportunity given to him for personal hearing and makes his submission, the Disciplinary Authority may keep the same in view while inflicting the punishment. If he does not come for the personal hearing, the Disciplinary Authority will issue an order imposing the punishment (Draft 'G') and convey it to the employee under advice to the administrative authority. He shall also forward a report of the case to the Regional Office, Central Office, in the prescribed form (Draft 'H').
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> 8.9. On receipt of the above order from the Disciplinary Authority the administrative authority will issue an administrative order on the employee imposing the punishment given by the Disciplinary Authority (Draft 'I')."

So, as per the above provisions, the disciplinary authority, after having decided on the punishment, was required to follow the procedure prescribed in clause 8.8 of the Bipartite Settlement which covers both the eventualities i.e.

(a) if the workman avails the opportunity of personal hearing, and
(b) if he does not avail such opportunity.

In eventuality (a), submissions made by the employee are to be kept in view while awarding punishment, and in eventuality (b), order imposing punishment is required to be conveyed to the employee under advice to the

administrative authority, with a report of the case to the Regional Office, Central Office, in the prescribed form. Thereafter, the administrative authority is required to act as per clause 8.9, which provides that on receipt of the said order from the disciplinary authority, the administrative authority would issue an administrative order on the employee, imposing the punishment given by the disciplinary authority.

Learned counsel for the petitioner vehemently contended that the disciplinary authority did not commit any illegality or irregularity in seeking guidelines from the Central Office/Chief Vigilance Officer who had, in response thereto, tendered the advice of imposing punishment of dismissal from service on respondent No.2. He referred to clauses 14.1, 14.2 and 14.3 of the Bipartite Settlement (Disciplinary Action Procedure), Ex.W/X, in this context. The contention is, however, without any merit, as the directions contained in these clauses are applicable to only such disciplinary cases, which are treated/declared as vigilance cases by the disciplinary authority. The case in hand (of respondent No.2) was, however, never treated as one such case but was treated as an ordinary disciplinary case, and the enquiry against him was also conducted by the disciplinary authority itself. So, the disciplinary authority could not have enhanced the punishment, on the asking of the higher authority, and its act of enhancement of punishment, at the instance of the higher authority, was, therefore, illegal and could not be sustained. It was, therefore, rightly set aside by the Tribunal.

The amount (Rs.2600/-) taken as advance by the workman-respondent for Leave Fare Concession had been fully recovered/ refunded, and that too, along with commercial interest at the rate of 18%. The

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Tribunal further found that the only fault of the workman- respondent was his failure to inform the Bank about his inability to proceed on journey (for which the advance was taken) due to medical reasons, and for that, he was duly made to pay interest at the commercial rate (i.e. 18%) on the amount taken as advance. Stoppage of one increment without cumulative effect, as punishment, was, therefore, sufficient to meet the ends of justice, in the facts and circumstances of the case.

The award of the Tribunal, thus, does not call for any interference, and the petition shall stand dismissed. Parties shall bear their own costs.

22.12.2006. (Kiran Anand Lall)
vs. Judge.